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SENATE BILL NO. 47

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 10, 2022)

(Patron Prior to Substitute—Senator Locke)

*A BILL to amend and reenact § 58.1-439.30 of the Code of Virginia, relating to income tax; housing opportunity tax credits.***Be it enacted by the General Assembly of Virginia:****1. That § 58.1-439.30 of the Code of Virginia is amended and reenacted as follows:****§ 58.1-439.30. Tax credit.**

A. A housing opportunity tax credit shall be allowed for each qualified project for each year of the credit period, in an amount equal to the amount of federal low-income housing tax credit allocated or allowed by the Authority to such qualified project, except that there shall be no reduction in the tax credit allowable in the first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2).

B. For taxable years beginning on and after January 1, 2021, but before January 1, 2026, a qualified taxpayer may claim a housing opportunity tax credit against its Virginia tax liability prior to reduction by any other credits allowed the taxpayer. The housing opportunity tax credit may be allocated by pass-through entities to some or all of its partners, members, or shareholders in any manner agreed to by such persons, regardless of whether or not any such person is allocated or allowed any portion of any federal low-income housing tax credit with respect to the qualified project, whether or not the allocation of the housing opportunity tax credit under the terms of the agreement has substantial economic effect within the meaning of § 704(b) of the Internal Revenue Code, and whether or not any such person is deemed a partner for federal income tax purposes as long as the partner or member would be considered a partner or member as defined under applicable state federal law, and has been admitted as a partner or member on or prior to the date for filing the qualified taxpayer's tax return, including any amendments thereto, with respect to the year of the housing opportunity tax credit. Such pass-through entities or qualified taxpayer may assign all or any part of its interest, including its interest in the tax credits, to one or more pass-through entities or qualified taxpayers, and the qualified taxpayer shall be able to claim the housing opportunity tax credit so long as its interest is acquired prior to the filing of its tax return claiming the housing opportunity tax credit.

C. The housing opportunity tax credit authorized by this article shall not be refundable. Any housing opportunity tax credit not used in a taxable year may be carried forward for the succeeding five years.

D. A qualified taxpayer claiming a housing opportunity tax credit shall submit a copy of the eligibility certificate at the time of filing its tax return with the Department. If the owner of the qualified project has applied to the Authority for the eligibility certificate but the Authority has not yet issued the eligibility certificate at the time the qualified taxpayer files its original tax return claiming the housing opportunity tax credit, the taxpayer may claim the housing opportunity tax credit based upon the amount of tax credit set forth in the carryover allocation or 42(m) letter, as applicable, issued to the qualified project and shall amend its tax return to include the eligibility certificate upon its receipt. If the amount of tax credit in the eligibility certificate is different than the amount of tax credit previously claimed, the taxpayer shall adjust the tax credit amount claimed on the amended tax return.

E. If under § 42 of the Internal Revenue Code, as amended, a portion of any federal low-income housing credits taken on a qualified project is required to be recaptured or is otherwise disallowed during the credit period, the taxpayer claiming housing opportunity tax credits with respect to such project shall also be required to recapture a portion of any tax credits authorized by this article. The percentage of housing opportunity tax credits subject to recapture shall be equal to the percentage of federal low-income housing credits subject to recapture or otherwise disallowed during such period. Any tax credits recaptured or disallowed shall increase the income tax liability of the qualified taxpayer who claimed the tax credits in a like amount and shall be included on the tax return of the qualified taxpayer submitted for the taxable year in which the recapture or disallowance event is identified.

F. The Authority shall administer the housing opportunity tax credit program and shall be authorized to promulgate the regulations and guidelines necessary to implement and administer the provisions of this article. Such regulations and guidelines may include the imposition of application, allocation, certification, and monitoring fees designed to recoup the costs of the Authority in administering the housing opportunity tax credit program. The Authority may also promulgate regulations and guidelines in consultation with the Department to allow a qualified project to elect in its application to the Authority to sell all or any portion of its credits awarded pursuant to this article to one or more unrelated taxpayers. Regulations and guidelines regarding the sale of credits, if promulgated, shall not take effect prior to January 1, 2023, and shall not apply to credits awarded prior to January 1, 2023.

60 G. The total amount of tax credits authorized under this article shall not exceed \$15 million per
61 calendar year housing opportunity tax credit created pursuant to this article shall only be claimed with
62 respect to taxable years beginning on or after January 1, 2022.
63 2. That the provisions of this act shall apply only to taxable years beginning on and after January
64 1, 2022.